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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.562 OF 2007

Kishori Shankar Bharne Appellant
versus
Corporation Bank and others Respondents

Mr.Hiranandani i/by C.G.Gavnekar for appellant.

CORAM : A.S.OKA, J.

DATE : 09th March 2007

PC :

1. The submissions of the learned advocate appearing for the appellant were heard on 5th March 2007. On that date none appeared for the respondents though the office noting shows that the respondents have been served.

2. A decree was passed by the learned Judge of the City Civil Court in Suit No.3010 of 2006. In the execution of the decree, an order of attachment was passed. The appellant has taken out a Notice of Motion under Order XXI, Rule 58 of the Code of Civil Procedure, 1908. The said Notice of Motion has been dismissed by order

dated 28th September 1999.

3. The submission of the learned advocate for the appellant is that the Trial Court ought to have given an opportunity to the appellant to lead evidence as order made after adjudication under Rule 58 of Order XXI of Code of Civil Procedure, 1908 has a force of a decree. He submitted that without giving an opportunity to the appellant of leading evidence, the motion has been dismissed.

4. I have considered the submissions. There is nothing on record to show that the appellant applied before the Trial Court for permission to lead evidence. It is true that there is also nothing on record to show that at any stage the matter was kept for recording of the evidence. The learned Judge in paragraph no.19 of the impugned order has observed that the invoices which were relied upon by the appellant were not proved by the appellant by entering into witness box or by examining any other witness.

5. The appellant has deposited in this Court a sum of Rs.7,500/- being costs payable to the first respondent. In my view, one opportunity

deserves to be granted to the appellant to appear before the Trial Court and lead evidence. Hence, the impugned order deserves to be quashed and set aside.

6. Hence, I pass following order :-

a) The impugned judgement and order dated 28th September 1999 in Notice of Motion No.1589 of 1999 in S.C.Suit No.3010 of 1986 is quashed and set aside and the Notice of Motion is restored to the file;

b) The first respondent will be entitled to withdraw a sum of Rs.7,500/- (Rs.Seven thousand five hundred only) deposited by the appellant in this court by way of costs;

c) The appellant is directed to appear before the Trial Court on 16th April 2007 at 11.00 a.m.. The learned Trial Judge will finalise the schedule of hearing and will issue consequential directions on that date;

d) All contentions of the parties are expressly kept open;

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e) Ad-interim order passed by this court on 15th December 2006 in Civil Application No.5295 of 2006 will continue to operate till the final disposal of the Notice of Motion. The Notice of Motion shall be disposed of expeditiously and preferably on or before 30th October 2007;

f) The appeal is partly allowed in the above terms. Writ be sent immediately.

(A.S.OKA, J.)